

**Glenda Wiles**

**From:** Bitterroot Good Neighbors [hello@bitterrootgoodneighbors.org]  
**Sent:** Monday, August 06, 2007 10:56 AM  
**To:** Glenda Wiles  
**Cc:** Karen Hughes  
**Subject:** Hwy 93 Interim Zoning

**RECEIVED**

**AUG 06 2007**

**Ravalli County Commissioners**

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Commissioners:

I am attaching a proposal for Interim Zoning regarding commercial development in the Highway 93 Corridor, and a letter providing background for the proposal.

The Bitterroot Good Neighbors Coalition believes that rational, planned commercial development is essential to the economic and environmental health of Ravalli County. On the other hand, unplanned development along this busy corridor presents an acute, significant public safety, health, and welfare issue. Only by putting some brakes on unplanned development can we allow ourselves the time to create permanent zoning that directs commercial development where the infrastructure can support it. Working in coordination with the Montana Department of Transportation, the Ravalli County Planning Office and the Board of County Commissioners can guide commercial development and use all the tools at our disposal—but only if we implement Interim Zoning now.

We understand that some elements that might be desirable as part of a permanent commercial zoning plan for the Highway 93 Corridor may not be implemented until the 2-year proscription based on the defeat of Resolution 1844 has expired. Interim Zoning, good for one year with an optional year-long extension, is a means to control development until these tools can be brought back into use.

The Bitterroot Good Neighbors present this plan as a starting point. Our goal is to be a useful resource, and we would like to be a part of the ongoing conversation that will be necessary both to implement Interim Zoning, and to develop a permanent zoning plan.

Russ Lawrence, President  
 Bitterroot Good Neighbors Coalition

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8/6/2007

**COUNTY OF RAVALLI, MONTANA  
BOARD OF COUNTY COMMISSIONERS RESOLUTION**

**RESOLUTION NO.**

**AN INTERIM ZONING RESOLUTION RESTRICTING COMMERCIAL  
DEVELOPMENT ON HIGHWAY 93**

WHEREAS, Montana Code Annotated Section 76-2-201 et seq, authorizes the Board of County Commissioners to enact zoning regulations and to provide for their administration and enforcement and amendment; and

WHEREAS, the County Commissioners deem it necessary for the purpose of promoting the health, safety and the general welfare of the County to enact zoning regulations; and

WHEREAS, the County Commissioners have directed the County Planning Department and the Planning Board to commence procedures for the adoption of Permanent County Zoning Regulations, but these permanent zoning regulations will not be in place in time to adequately address the development of commercial facilities in the Highway 93 Corridor; and

*WHEREAS, the County Commission supports the enhancement of public health, safety, and convenience for the citizens and visitors by the construction and maintenance of adequate public roadways to support planned urban land uses and regional transportation interests;*

*WHEREAS, the US Highway 93 Expansion Record of Decision identifies existing and projected traffic capacity deficiencies in the South US 93 corridor;*

*WHEREAS, US 93 is a regional and national transportation asset providing commercial, industrial and residential road service to and through one of the fastest growing regions of the State;*

*WHEREAS, the U.S. Department of Transportation Federal Highway Administration and the Montana Department of Transportation have primary responsibility for the operation and maintenance of US 93 as part of the National Highway System;*

WHEREAS, Ravalli County has experienced and is anticipated to experience the following trends, which have increased the likelihood of building and development of commercial facilities in the Highway 93 Corridor;

- a) The growth rate in Ravalli County was 44 percent between 1990 and 2000 and 9 percent between 2000 and 2004;
- b) This rate of growth places Ravalli County in the forefront as one of the fastest growing counties in the states for this time period and its rapid growth is projected to continue;
- c) US Highway 93 is the primary north-south transportation corridor through the Bitterroot Valley and is generally located in close proximity to the Bitterroot River. Expansion of Highway 93 has been completed at the north end of the Valley and it is imminent between Stevensville and Hamilton;
- d) Expanded capacity on the major transportation corridor and any development resulting from this expansion may adversely affect the Bitterroot River, a primary scenic and recreation corridor in the Valley, and the scenic views of the Bitterroot and Sapphire Mountains;
- e) The Tristate Water Quality Council has stated that reliance on septic systems in fast growing rural counties can have an adverse impact on groundwater and surface waters. Furthermore, the potential for connection of commercial establishments to a public sewage treatment facility is limited because primary public sewage treatment facilities in the valley are located within the incorporated jurisdictions of the City of Hamilton and the Town of Stevensville and Town of Darby, with smaller systems located in the communities of Corvallis and Victor, and all of these systems are at or near capacity.

WHEREAS, the US Highway 93 "corridor" is defined as that area within one mile of either side of Highway 93 as it extends from the Missoula County line to the City of Hamilton; and

WHEREAS, in connection with this high rate of growth and development in the County, there has been, and it is reasonable to assume will continue to be, an interest in the development of commercial development along the County's primary transportation and scenic routes; and

WHEREAS, this development, in combination with continued high rates of residential development and general growth, have the potential to substantially and permanently affect public health and safety, and would be inconsistent with and frustrate Ravalli County's adopted Growth Policy and the County's efforts in developing permanent planning and growth regulations for the Highway 93 Corridor; and

WHEREAS, Montana Code Annotated Section 76-2-206 authorizes the County to enact interim zoning regulations, as an emergency measure in order to promoted the public health, safety, morals and general welfare, and if the purpose of the interim zoning regulation is to classify and regulate those uses and related matters that constitute an emergency, and the County is in the process of enacting permanent zoning regulations; and

*WHEREAS, the Corridor Plan shall promote beneficial, sustainable economic development that utilizes the Bitterroot River as an amenity while preserving and enhancing its ecological integrity and asset values. Specifically, water quality, natural shoreline vegetation, and wetlands will be restored, enhanced, or protected, and the environmental health of the river will not be compromised by development; and*

*WHEREAS, the corridor plan shall compile a list of riverfront regulatory issues to be addressed in the new land development code, including but not limited to*

- *Setbacks from the river/stream banks*
- *Grading and drainage (for water quality considerations)*
- *Acquiring easements as part of the development process*
- *Preserving natural riparian vegetation*
- *Public access/connectivity*
- *Viewshed/view corridors*

*WHEREAS, from the standpoint of river dynamics, no riverside development or stream bank treatment will prevent the Bitterroot River from safely passing flood stage flows, nor will permanent development be allowed that will be damaged by those flows. (Note: This statement is not intended to prevent the placement of properly designed and lawfully constructed piers, decks, docks, trails, or other appurtenant improvements associated with a substantial public interest that may in fact be damaged by major flood events).*

*WHEREAS, land and water based recreational values and opportunities associated with the river will be created, preserved, and enhanced, including public access to the river; and*

*WHEREAS, commercial development which generates more than 250 vehicle trips per day may substantially and detrimentally impact the factors set forth below and, if left unregulated, would render meaningless permanent planning and zoning regulations before the county has had the opportunity to develop and enact them and where these interim standards address the most significant impacts of commercial establishments on an interim basis; and*

*WHEREAS, the County Commission find it urgent, necessary and appropriate to adopt interim zoning regulations relating to commercial development along the Highway 93 Corridor because of their impacts upon the following factors and in order to;*

1. *Lessen congestion on US Highway 93;*
2. *Secure safety from fire, panic and other dangers;*
3. *Promote public health and general welfare;*
4. *Provide adequate light and air;*
5. *Prevent the overcrowding of the land; and*

6. Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and

WHEREAS, these interim zoning regulations relating to commercial development are made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value and buildings and encouraging the most appropriate use of land throughout the jurisdictional area; and

WHEREAS, the purpose of the Ravalli County Growth Policy include;

- a) Countywide Goal 4: "Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents." (page 25)
- b) Countywide Policy 4.1: "Encourage development that will minimize or avoid additional costs to the existing taxpayers." (page 25)
- c) Countywide Policy 4.2: "Consider the cumulative impacts of development." (page 25)
- d) Countywide Policy 4.4: "Improve and maintain existing infrastructure and public services." (page 26)
- e) Countywide Goal 5: "Protect and enhance natural resources & public open space." (page 26)
- f) Countywide Policy 5.4: Protect the Bitterroot River, including its scenic beauty (page 26)
- g) Countywide Policy 5.8: Preserve the scenic and historic values of US Highway 93 (page 27)
- h) Countywide Goal 6: "Promote and encourage a vibrant, sustainable, healthy economic environment that recognizes existing businesses and attracts new entrepreneurs." (page 28)
- i) Countywide Policy 6.2: "Support and encourage quality design and planning for more aesthetic commercial business development." (page 28)
- j) Countywide Policy 6.7: "Support an expanded, more vital, environmentally sustainable tourism and recreation industry." (page 28)
- k) Countywide Goal 7: "Plan for residential and commercial development." (page 29)
- l) Countywide Policy 7.4: "Encourage the continued development of a comprehensive, efficient, and predictable review and approval process for proposed new development.
- m) Countywide Policy 7.7: "Research the designation by appropriate authority, the location of new land uses which impact public health, safety and general welfare."

WHEREAS, all the requirements of Chapter 76, part 2, MCA, which regard the preparation of interim zoning resolutions have been met; and

WHEREAS, public meetings were held by the County Commissioners, XXXXXX for a resolution to enact the interim zoning to limit commercial development on US Highway 93 Corridor; and

WHEREAS, a notice of public hearing was held by the County Commissioners on XXXXX in order to give the public an opportunity to be heard regarding the proposed Interim Zoning Regulations.

NOW, THEREFORE, BE IT RESOLVED, that after consideration through the public process summarized above, Ravalli County adopts Interim Zoning Regulations Concerning Commercial Development along the Highway 93 Corridor, regulating establishments such as listed in the attached zoning regulations. Pursuant to Montana Code Annotated, Section 76-2-206 (2), this zoning resolution shall expire on XXXX, unless it extends for one (1) additional year by the Ravalli County Board of County Commissioners.

## RAVALLI COUNTY INTERIM ZONING REGULATIONS CONCERNING A US HIGHWAY 93 SOUTH CORRIDOR LAND USE PLAN

### SECTION 1. TITLE.

These regulations shall be known and may be cited as the Ravalli County Interim Highway 93 Corridor Plan.

### SECTION 2. AUTHORITY.

These Regulations are adopted pursuant to Sections 76-2-228, MCA, and are adopted as interim zoning regulations pursuant to Section 76-2-206 MCA, in response to increased interest in the commercial development in the Highway 93 South Corridor.

### SECTION 3. PURPOSE.

Commercial development in the Highway 93 South Corridor has the potential to substantially and permanently affect public health and safety, and may be inconsistent with Ravalli County's adopted Growth Policy. These Interim Zoning Regulations shall serve to address this situation while the Ravalli County Planning Department and Planning Board undertake procedures for adoption of permanent County zoning regulations.

### SECTION 4. JURISDICTION.

The area included within the jurisdiction of these regulations shall be defined as that area within one mile of either side of Highway 93 as it extends from the Missoula County line to the City of Hamilton in Ravalli County, Montana.

#### **SECTION 5. RECOVERY OF MINERAL, FOREST, OR AGRICULTURAL RESOURCES NOT AFFECTED.**

Nothing in these regulations shall be construed to prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner of any mineral, forest, or agricultural resource (76-2-209 MCA).

#### **SECTION 6. PERMIT REQUIRED**

A Development Permit must be obtained from the Permit Officer before any person may begin to construct, place, move, expand or structurally alter a commercial facility or establishment which generates less than 250 vehicle trips per day. A Development Permit will not be issued to proposals which create more than 250 vehicle trips per day.

#### **Corridor Planning:**

Multi-jurisdictional planning efforts, authorized by state and federal statutes, may be used to develop corridor plans. These plans could include specifics on how corridor preservation and access management will be achieved, and the type and scale of development will be encouraged through specific access locations, frontage roads, and other physical techniques. MDT's corridor preservation report "The Preservation of Right-of-Way for Transportation Corridors," provides an interesting overview.

This document was prepared to assist the Ravalli County Commissioners in implementing interim zoning protection to address uncontrolled strip development and commercial growth along the Highway 93 corridor north from Hamilton to the Missoula County line. Interim zoning is necessary because current studies regarding the highway corridor are outdated. The 93 Corridor is an environmentally sensitive corridor that has outstanding scenic values, and is the heart of Ravalli County. The lack of zoning and planning threatens our future ability to preserve the Corridor and insure that growth occurs in a responsible manner. Since commercial development is a significant contributor to increased traffic on Highway 93, interim zoning is necessary to address new commercial developments in the Highway 93 corridor, where such new commercial development will cause 250 or more new vehicle trips per day.

In March 2006, the University of Montana School of Law Land Use Clinic and the Ravalli County Planning Department hosted three public meetings in order to gather public input regarding issues posed by current and future uses of land in the Highway 93 south corridor. The Highway "corridor" was defined as that area within one mile of either side of Highway 93 as it extends from the Missoula County line to the City of Hamilton.

Land use issues in the Highway 93 corridor have been at the forefront of public discussion in Ravalli County in recent years. The majority of participants indicated that they were "very concerned" with the pattern and projection of growth in Ravalli County, and supported the development of a land use plan for the Highway 93 south corridor "*in the very near future.*" Particular planning tools were identified to address various issues raised in the study, and in furtherance of the goals and policies adopted in the Ravalli County Growth Policy.

In 1997, plans were finalized to reconstruct US 93, between Hamilton and Lolo, Montana. The EPA expressed concerns regarding the 1997 Record Of Decision (ROD) that, "the proposed action 'may induce and hasten changes in the pattern of land use, population density or growth rate of the Bitterroot Valley, and these changes may result in adverse effects to wetlands, riparian areas, wildlife habitat, and other natural systems, including ecosystems.'" ROD 6. An EIS and subsequent Record of Decision were crafted for the project, discussing the goals of the project, the means to achieve them, and potential impacts along 34.2 miles of highway. ROD 1. Nearly 10 years later, the construction of the highway has not been completed, including the area immediately north of Hamilton. Meanwhile, the corridor has experienced substantial new growth of businesses, from Florence to Hamilton. Additional new businesses have proposed locating in this corridor in the near future. For example, one large retailer has requested two access points directly from highway 93 north of Hamilton, to allow thousands of daily visitors to enter its proposed 154,000 square foot building, with a 1000-space parking lot.

Ravalli County, MDoT, DEQ and other agencies entrusted with public health, welfare and safety can not make informed decisions about whether/where/how to allow increased development until the County has time to study the matter and propose needed land use planning changes. New developments will severely impact the surrounding traffic and environment, without thoroughly examining these impacts, both individual and cumulative. It is clear that the 1997 Environmental Impact Statement for US 93 alone cannot serve as a disclosure of growth impacts, and the 93 Corridor must be studied anew.

For example, the 1997 EIS did not contemplate access to commercial buildings on much of the reconstructed highway. Access was considered "restrictive in undeveloped areas." ROD 3. Furthermore, the ROD cites the "[u]se of access policies to encourage development where it already exists and discourage growth in undeveloped areas." ROD 1. Access is restricted in undeveloped areas because "[l]and use is an important consideration," ROD 3. One of its goals



is the “protection of rural undeveloped areas.” ROD 4. *See* EIS 2-14. Yet commercial entities continue to propose new accesses, in areas that were assumed to be restrictive. The County has no regulation in place to address these issues.

Other areas were defined as “situational access.” Situational access allows for “a case by case review . . . with regard to highway design, traffic conditions, land use objectives, and other public policy statements . . . .” The EIS notes that “large use such as a shopping center or mall” would be denied in a situational access zone “to preserve land use and/or safety,” even where, “low volume accesses for small business might be tolerated.” EIS 2-5.<sup>1</sup> For example, new large retail establishments may generate thousands of additional trips each day.<sup>2</sup> Such an increase in trips daily constitutes a “large use,” access to which is prohibited in both the restrictive and situational zones. The addition of access points to new developments, with tens of thousands of cars driving to the location weekly, constitutes a changed circumstance not contemplated by the original EIS. The County simply has not addressed the problems that such increased traffic would impose.

The ROD also states that “any new access requests in the restricted areas would require re-evaluation of the EIS to determine if the effects would be significant.” Carl James, Transportation Specialist, US DOT<sup>3</sup> “The ROD and FEIS limit new access in the restricted areas and allows [sic] new access in the situational areas on a case by case basis. Changes . . . could be allowed if the change was in harmony with county land use planning and did not adversely affect the safety or operational characteristics of US 93.” *Id.* Thus, the FHWA’s own expert recognizes that allowing changes with adverse safety or operational impacts can not be permitted under the current EIS.

On April 12, 2006, Ravalli County Commissioners enacted *An Interim Zoning Resolution Limiting the Size of Large Scale Retail Services Establishments*. Resolution No. 1844. The Commissioners declared that it is “urgent, necessary and appropriate to adopt . . . regulations relating to large scale retail sales and services establishments,” including to “lessen congestion in the streets;” and “facilitate the adequate provision of transportation.” The declarations in the resolution are still in place, regardless of election results. The findings contained in that resolution are incorporated herein, and provide additional bases for enacting emergency interim zoning to restrict new commercial development along the Highway 93 Corridor until the County can address the matter through permanent zoning.

Changes to the project must be congruent with the county’s Growth Policy which has been in place since 2002.<sup>4</sup> The Growth Policy cites public open space and private open land as “Countywide Goals.” *Ravalli County Growth Policy*, § B, 3.1A-B, 19. The County has also implemented an Open Lands bond, with overwhelming public support. Other goals embodied within the growth policy include, “protection of water quality and supply (goal 2); protection of air quality (goal 3); and to protect and enhance natural resources (goal 5).” Preferred land use patterns are cited in the growth policy as a means of implementation, to show a “‘direction’ for growth to accommodate future needs and demands, while respecting physical and economic factors such as floodplains, critical wildlife habitat and water quality concerns . . . it seeks to

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<sup>1</sup> *see also* EIS 2-23

<sup>2</sup> A 136,000 sq. ft. store is estimated to incur an average of 7,310 trips every Saturday. Institute of Traffic Engineers *Trip Generation* (7<sup>th</sup> Ed.).

<sup>3</sup> Ltr. from Carl James, Transportation Specialist, US DOT, Montana Division, to Lyle Manley, Staff Attorney, MDT (Nov. 2, 2006).

<sup>4</sup> <http://www.co.ravalli.mt.us/planning/growthpolicy.pdf>

increase the predictability of compatible land development . . .” *Id.* § 4, 32. “Development should be located in areas, such as near roads and other infrastructure, so as to minimize additional costs to taxpayers; Residential and commercial growth should be encouraged adjacent to existing development.” *Id.* § 2, 8. Permitting large scale commercial buildings with access in restrictive/situational zones is in direct conflict with this premise.

Adding accesses to facilitate commercial access in an area which is currently open space, adjacent to sparsely populated residential area, violates the mandates that were considered when Highway 93 was approved for reconstruction in the 1997 ROD. Current traffic increased 13% from 1998 to 2004, contributing to a myriad of environmental problems. In the context of new wildlife underpasses, and new development, new scientific evidence should be consulted regarding wildlife in the area and their migratory patterns and requirements. The EPA has recently issued revised, more stringent air quality regulations, and has informed Hamilton that its current air quality violates these new standards.<sup>5</sup> Emissions from the “tailpipes of motor vehicles” are cited as contributing to the problem.<sup>6</sup> Increasing consumer traffic and diesel delivery trucks can only exacerbate this existing problem. Hamilton should not be forced to pay fines levied on local government<sup>7</sup> to pay for a problem exacerbated by private business.

An increase in traffic to the site by tens of thousand of trips weekly<sup>8</sup> will undoubtedly increase toxins in the air. The EPA has recently issued new air quality regulations, and has informed Ravalli County that its current air quality violates these new standards. Increasing consumer traffic and diesel delivery trucks can only exacerbate this existing problem. In addition, large commercial stores may require deliveries from trucks which idle for long periods of time. Both increased numbers of vehicles, and increased waiting times for existing vehicles will cause a degradation of air quality, increasing the risk of cancer and harmful respiratory and cardiovascular effects

More vehicles ensure more collisions with other vehicles, bicycles, pedestrians and wildlife. More collisions result in more fatalities, injuries, and economic costs. Mitigation by increasing traffic signals will create more traffic jams. This increase in traffic can not occur while maintaining the current level of service, and will likely create a pattern of stop and go traffic. Quality of life issues, such as increased travel time, frustration at waiting at traffic signals, increased noise, light pollution and the unsightly nature of the building and parking lot will be negatively affected. Any widening of the highway to mitigate Level of Service or safety issues will further exacerbate health and environmental risks. Adding access points risks causing major deterioration in both level of service and safety.

Increased traffic deposits pollutants on the roadways. Increased paved surface area prevents the soil from acting as a filter for these chemicals, which will eventually wash into the rivers and aquifers from which we get our water. The facility will undoubtedly increase the use of the local aquifer. The Tristate Water Quality Council has stated that the reliance of septic systems in fast-growing rural counties can have an adverse impact on groundwater and surface

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<sup>5</sup> Bob Jeffrey, Montana DEQ Air Resources Management Bureau, *Montana Cities May Fail to Meet New Air Quality Standards*, Press Release, Jan. 17, 2007. [www.deq.mt.gov](http://www.deq.mt.gov); Anthony Quirini, *Ravalli County's air quality below national standards*, *Ravalli Republic*, Mar. 30, 2007, <http://ravallirepublic.com/articles/2007/03/30/news/news02.txt>

<sup>6</sup> Kristin Knight, *Hamilton may not meet new air quality standards*, *Ravalli Republic*, Jan. 23, 2007. <http://ravallirepublic.com/articles/2007/01/23/news/news03.txt>

<sup>7</sup> Flathead County was fined almost \$29,000 by MDEQ for air quality violations. William L. Spence. *Flathead County fined for air-quality violations*, *The Daily Inter Lake*. Feb. 6, 2007.

<sup>8</sup> ITE, *supra* n. 2

water, while public sewage treatment facilities are limited to the City of Hamilton. Wetland mitigation was noted as an area of concern in the 1997 EIS with plans and locations still requiring approval. EIS S-6

Trout populations in the upper stretches of the Bitterroot have been declining.<sup>9</sup> The Bitterroot Valley is also recognized as critical wildlife habitat for endangered species, as well as being a key migration corridor. Wildlife who have depended on the greater area include deer, elk, moose, fox, and wolves. The endangered Peregrine Falcon and threatened Bald Eagle inhabit the area, as well. The opportunity for animal-vehicle collisions is also increased. Light pollution and increased noise also affect the behavior and health of animals.

Clearly, large scale commercial development may result in potentially significant consequences to the environment and to the safety of Ravalli County residents. Widening lanes and putting in traffic signals may mitigate some issues, but can not mitigate the increased air and light pollution, quality of life, and environmental effects. The impact to safety for humans and the surrounding environment could be devastating.

Ravalli County cannot rely on MDT to control development along Highway 93. The highway should be a scenic route, used for travel in between designated growth areas, as requested by the public, rather than a thirty-four mile zone of shopping congestion. Emergency zoning measures must be enacted to restrict development until a permanent land use plan for the Highway 93 south corridor is completed.

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<sup>9</sup> Kristin Knight, *Rainbow populations decline on the Bitterroot could be attributed to whirling disease*, *Ravalli Republic*, Mar. 19, 2007.